

case like this, be inferred upon any but the strongest evidence. I do not, however, place my conviction of its non-existence in this case upon the ground that as between parties, bearing the relations to each other which these parties do, more stringent evidence will be required to establish fraud than in an ordinary case, but upon the higher ground, that however Mr. Williams may have been mistaken as to the actual state of the accounts between his brother and the company, nothing was farther from his intention, as I am satisfied, than to impose upon him to the extent of a dollar. It is quite obvious that he carried through the settlement in defiance of the strong resistance of those who had better opportunities than himself of knowing how the accounts stood, and that at one period, the immediate family of the complainant, so far from complaining of him for his efforts to effectuate the settlement, were dissatisfied with the parties who made opposition to it.

It is next to be considered whether this settlement was made under such circumstances of error and mistake, as to render it constructively fraudulent, and this question is supposed to depend upon whether it was based upon a statement of accounts, or, according to the ground taken in the answer, it was a compromise of conflicting and unascertained claims, preferred by the defendant against the plaintiff. If the latter, that is, if it was a compromise of claims of this description, it is insisted it can only be impeached upon the ground of actual fraud.

Upon a very careful investigation of the evidence, my mind is brought to the conclusion, that the accounts procured by Nathaniel Williams from George Williams, were the basis upon which the settlement was made—that Mr. Mayer, and Mr. Mayhew, who was consulted as a friend, assented to the terms proposed, upon the assumption that these accounts were correct, and that, but for that assumption, they would not have advised the settlement. I do not, therefore, regard the settlement as a mere compromise, but as an agreement to settle, in the mode proposed, a claim which was presented in the form of a stated account, which, without examination, was assumed to be correct. This is certainly true with regard to the account